

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 325 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MOHANBHAI M PADHIAR

Appearance:

Mr. S.T.Mehta, A.P.P. for Petitioner

MR NS DESAI for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 09/11/98

ORAL JUDGEMENT

The State of Gujarat has filed this appeal against the judgment and order of acquittal recorded by the Addl. Sessions Judge, Kheda at Nadiad on 7th December, 1984 in Sessions Case no.116/'84. The learned Additional Sessions Judge had acquitted all the accused

of the charge under Sec.302 read with Sec.120B of the Indian Penal Code.

Facts leading to the prosecution of the respondents(hereinafter referred to as "the accused") briefly stated are as under:

One Arvindbhai Bhalabhai Jadav, now deceased, left his house on a bicycle at about 11.00 a.m. of 4th December, 1983 informing his mother that he is going to visit cinema. He did not return at night and even in the morning of the next day. Therefore, the members of the family inquired and till next day he was not found. On the third day, Bhalabhai Motibhai-father of the deceased informed Mahlav Police Station that Arvind is missing since 4th October, 1983. Members of the family came to know on 6th December, 1983 that his cycle is lying near Chokdi(cross roads) on the Sandeshwar Akash Road. So Kanubhai brother of the deceased and his maternal uncle went to the place and found that the cycle lying there was taken away by one Manubhai Shabhaibhai Parmar. They therefore started inquiring about Arvindbhai in the adjoining fields where they found something like dead body in an unused well of Kantibhai Mathurbhai. They therefore went home and informed Bhalabhai and other persons. Kanubhai and maternal uncle also went to inform Mahelav Police Station. Police Officer in charge of the police station immediately reached the well and kept watch till morning. In the morning, PSI Shri Joshi went to the well and he drew out the dead body from the well. The said dead body was identified to be of Arvindbhai by his brother Kanubhai. Complaint was registered and inquest report on the dead body was drawn and was sent for postmortem and investigation started. On completion of investigation, the respondents alongwith one Kokilaben who was accused no.4 against whom the acquittal appeal is dismissed were chargesheeted. On completion of the trial they came to be acquitted and the present appeal is filed against the accused from which appeal qua Kokilaben is summarily dismissed.

Learned A.P.P. Mr. Mehta contended before us that the case solely rests on circumstantial evidence and there are no eye witnesses. Mr. Mehta contended that the learned Additional Sessions Judge has not appreciated properly the circumstances fully established by the prosecution completing chain and leading to the hypothesis of guilt of the accused. Learned Addl. Sessions Judge has therefore committed an error in acquitting the accused. Mr. Mehta contended before us that following are the circumstances which form the

complete chain to bring home the charge levelled against the accused. The said circumstances are (1) That the accused have motive to commit offence and that motive is that though the deceased was married he was in love with the accused no.4-sister of the accused no.1. (2) That the accused had opportunity to commit the said offence (3) That the deceased was last seen together in company of the accused no.2 in the field (4) The accused were seen going to their field together in the morning and in the evening they were seen sitting in the Cheda(border) of the field though it was dark. This would lead to presume that they were sitting there with a view to destroy the evidence. (5) The accused nos.1,2 and 3 have made discovery of incriminating articles. (6) The accused no.2 has written an inland letter Exh.31 to mislead and misguide the investigation and (7) That some ten days prior to the incident there was quarrel between the accused and Arvindhbai.

Of these circumstances, three circumstances are very seriously pressed into service by the learned A.P.P. They are, (1) the accused was seen last together in company of the accused no.2 (2) the incriminating articles are discovered at the instance of the accused nos.1,2 and 3. (3) inland letter Exh.31 is written by the accused no.2 to mislead and misdirect the investigation.

As held in the case of SHARAD BIRDICHAND SARDA V. STATE OF MAHARASHTRA (1984 SC 1622), to base conviction on circumstantial evidence, the following conditions must be fulfilled after they are fully established:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' satisfied.
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved,

and

- (5) there must be a chain of evidence to complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction.

The question in this appeal is whether the three circumstances on which the learned A.P.P. seriously relies on, satisfy the requirements as stated in SHARAD BIRDICHAND'S case (Supra). Our answer is, no. The prosecution has relied on to prove the fact that the deceased was seen last in company of the accused no.2, evidence of employee of the complainant. According to that witness, when deceased has come to him in his field at about 11.30 a.m. to inquire into the progress of the work, the accused no.2 had come to call him saying that it would be late as they wanted to go to visit cinema and they left together from there. The time alleged by this witness to have seen the deceased is 11.30 a.m. and there are number of fields surrounding their field and there is no evidence of any independent witness showing that Arvind was seen in company of Kantibhai (accused no.2). Ravjibhai being employee of Bhalabhai-original complainant can be said to be an interested witness and is required to be supported by independent evidence. Though there were other labourers as admitted by Ravjibhai they are not examined by the prosecution. There are material contradictions in his evidence to the effect that Kantibhai(accused no.2) told Arvindbhai to come, it being late is not stated before police. He has also not stated before the police that he saw Kantibhai-accused no.2 coming from the opposite side. In our opinion, the learned Additional Sessions Judge has rightly not accepted his evidence as being of an interested person and also guilty of improvement in the prosecution case. When family members of Arvindbhai was inquiring about Arvind, he did not tell them about the fact that he has seen Arvindbhai going away in company of Kantibhai(accused no.2). Thus, in our opinion, this circumstance does not conclusively establish that the accused was seen last in company of the accused no.2. So far as incriminating articles are concerned, no doubt

article no..13 dharia discovered by the accused no.1 is found stained with human blood of "B" group, but it is not proved by the prosecution or brought on record by the prosecution that the blood group of deceased was also "B" group. The accused no.2 has shown the scene of offence from where bloodstained earth was collected. It is rather shocking and surprising that it is said to be an incriminating article. Incriminating article is one which says or suggests involvement of person in commission of offence. Find of bloodstained earth at the instance of the accused at the most would show that the place from where the earth is found is the scene of offence, but that does not lead to infer that he is a participant in commission of offence. Therefore, find of bloodstained earth(article no.2) without anything more cannot be said to be incriminating the accused no.2 in commission of offence. So far as article no.3 is concerned, they are found at the instance of the accused no.3, however, they are not proved by the prosecution to be of the accused no.1. Simply because the accused no.3 states that these are the articles of the accused no.1 cannot be accepted as the said statement of the accused no.3 would be inadmissible in evidence. Thus, this circumstance of discovery is also not , in our opinion available to the prosecution and has been rightly discarded by the learned Addl. Sessions Judge. Learned A.P.P. has also relied on the circumstance of an inland letter alleged to have been written by the accused no.2. and according to the prosecution duly proved to have been written by the accused no.2 in view of the handwriting expert evidence. The learned Addl. Sessions Judge has accepted that inland letter Exh.31 may be written by the accused no.2 in all probability but that by itself is not sufficient to hold the accused no.2 responsible for commission of the offence or involvement in the offence.

One circumstance relied on by the prosecution, in our opinion, adversely affects circumstance of deceased being seen last together in company of the accused no.2. That circumstance is the quarrel which took place ten days before. The accused no.2 is the first cousin of the accused no.1. That alleged quarrel which took place before ten days of the incident was in connection with relation of the accused no.4 with the deceased. If that would be so, then, in all probability, the accused no.2 will not go to call the deceased and they will not go in company of each other to visit cinema. This circumstance by itself as relied on by the prosecution makes that circumstance of having seen last together either suspicious or doubtful.

We do not discuss the whole evidence in detail as we are of the view and supported by the judgment in the case of STATE OF KARNATAKKA V HEMAREDDY (AIR 1981 SC 1417) and also in the case of GIRIJANANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHOUDHARY(AIR 1967 SC 1124). It is not necessary for appellate court to reiterate the reasons given by the trial Court when agreeing generally with the view of the trial Court. Relevant observation in HEMAREDDY'S case in paragraph (6) reads as under:

"This Court has observed in Girijanandini Devi v. Bigendra Nandini Choudhary(1967) 1 SCR 93: AIR 1967 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

In view of the above discussion, we do not find any substance in this appeal and the appeal stands dismissed.

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